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Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: AF 09-0688

Anderson, Diane

From: Mark Schultz <thaischultz2@yahoo.com>
Sent: Saturday, December 3, 2016 6:03 PM
To: Court, SCclerk
Subject: Rule 8.4(g) of the Professional Rules of Conduct for Montana Attorneys

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Dear Honorable Members of the Court,

You have called for public comment on the proposed new Rule 8.4(g) of the Professional Rules of Conduct for Montana Attorneys in your order of October 26, 2016 regarding case number AF 09-0688. I request that you decline to adopt this rule.

The official comments that interpret this rule state that "conduct related to the practice of law" include, among other things, "business or social activities in connection with the practice of law." Does this mean that what lawyers say about the law in almost any area of their lives may make them subject to the discipline of the court?

My primary concern as a pastor and as a citizen is that lawyers may be unable or unwilling to give advice, or even to sit on governing boards of congregations that have religious beliefs which are considered discriminatory toward certain sexual orientations, gender identities, or marital status. That sounds very much like a threat to freedom of speech and to religious freedom.

In regard to freedom of speech, this rule seems to limit Montana lawyers' verbal conduct, even in social activities should those in any way be connected with the practice of law. This would be a dangerous precedent. Additionally, this rule does not allow for sincerely held religious beliefs. Such beliefs may lead a lawyer to speak against certain behaviors associated with a sexual orientation, gender identity, or marital status, without acting in a discriminatory manner. If they speak their beliefs they may be disciplined.

Regarding religious freedom, Montana lawyers may find themselves under the threat of discipline by associating themselves with religious organizations that hold certain behaviors to be contrary to their belief system. This may severely limit access of a congregation or a not-for-profit organization to legal advice by making lawyers reluctant to sit on their governing boards.

I request that you decline to adopt this rule.

Sincerely,

Rev. Mark Schultz, pastor of St. Paul and Zion Lutheran Churches – Havre and Chinook
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